

Amendment No. 1 to HB1352

Howell
Signature of Sponsor

AMEND Senate Bill No. 1615*

House Bill No. 1352

by deleting all language after the enacting clause and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 55-17-121, is amended by adding the following as a new subsection:

(d)

(1) A manufacturer or distributor shall specify in writing to each of the manufacturer or distributor's franchise motor vehicle dealers (dealers) operating in this state the dealer's obligations for preparation, delivery, and warranty services related to the manufacturer or distributor's products. The manufacturer or distributor shall compensate the dealer for the warranty services the manufacturer or distributor requires the dealer to provide, including warranty and recall obligations related to repairing and servicing motor vehicles of the manufacturer or distributor and all parts and components authorized by the manufacturer or distributor to be installed in, or manufactured for installation in, such motor vehicles.

(2)

(A) The manufacturer or distributor shall provide to the dealer a schedule of compensation that specifies reasonable compensation the manufacturer or distributor will pay to the dealer for such recalls and warranty services, including for parts and diagnostics.

(B) In determining the schedule of compensation for parts, the manufacturer or distributor may multiply the price paid by the dealer for

parts, including all shipping costs and other charges, by the sum of one (1) and the dealer's average percentage markup. The dealer's average percentage markup is calculated by subtracting one (1) from the result of dividing the total amounts charged by the dealer for parts used in warranty-like repairs by the total cost to the dealer for the parts in the retail service orders submitted pursuant to subdivision (d)(2)(C).

(C)

(i) The dealer may establish its average percentage markup for parts by submitting to the manufacturer or distributor copies of one hundred (100) sequential retail service orders paid by the dealer's customers, or all of the dealer's retail service orders paid by the dealer's customers in a ninety-day period, whichever is less, for services provided within the previous one-hundred-eighty-day period. The manufacturer or distributor shall not consider retail service orders or portions of retail service orders attributable to routine maintenance such as tire service or oil service.

(ii) If the manufacturer or distributor determines, from any set of repair orders submitted under subdivision (d)(2)(C)(i), that the retail markup rate for parts calculated is substantially higher or lower than the rate currently on record with the manufacturer or distributor, then the manufacturer or distributor may request additional documentation for a period of either thirty (30) days prior to, or thirty (30) days following, the time period for which the repair orders were submitted for purposes of an adjustment. Within thirty (30) days of receiving the dealer's submission and additional documentation, if applicable, the manufacturer or

distributor shall then approve or deny the establishment of the dealer's average percentage markup. If the manufacturer or distributor approves the establishment of the dealer's average percentage markup, then the markup or rate calculated under this subdivision (d)(2) becomes effective forty-five (45) days after the date of the manufacturer or distributor's approval. If the manufacturer or distributor denies the establishment of the dealer's average percentage markup, then the dealer may file an appeal to the commission. The manufacturer or distributor has the burden of proof to establish that the manufacturer or distributor's denial was reasonable. If the commission finds the denial was not reasonable, then the denial is a violation of this chapter and the commission shall determine the dealer's average percentage markup for purposes of calculating a reasonable schedule of compensation. In making such a determination, the commission shall not consider retail service orders or portions of retail service orders attributable to routine maintenance such as tire service or oil service.

(iii) A manufacturer or distributor shall not require the dealer to establish an average percentage markup by a methodology, or by requiring the submission of information, that is unduly burdensome or time-consuming to the franchise motor vehicle dealer, including, but not limited to, requiring part-by-part or transaction-by-transaction calculations.

(iv) A dealer shall not request a change in the dealer's average percentage markup more than once in any one-year period.

SECTION 2. This act takes effect July 1, 2021, the public welfare requiring it.